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Acting United States Secretary of Labor*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

JULIE A. SU, Acting Secretary of Labor, United
States Department of Labor,

Plaintiff,

v.

PIZZICATO, INC., an Oregon Corporation;
MARC FRANKEL, an individual; TRACY
FRANKEL, an individual; and
JOHN-FELIX RIPPEL, an individual,

Defendants.

Case No.

COMPLAINT

Violations of Fair Labor Standards Act
("FLSA"), 29 U.S.C §§ 201, *et seq.*

NATURE OF THE ACTION

1. Plaintiff JULIE A. SU, Acting Secretary for the U.S. Department of Labor ("the Acting Secretary"), is charged with enforcing the FLSA to eliminate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers[.]" 29 U.S.C. § 202(a). In bringing actions under the FLSA, the Acting Secretary represents not only the interest of the individual employees affected by an employer's

violations of the law, but also the public interest, including the interests of employers whose ability to compete in compliance with the law is harmed by employers who deny employees overtime wages.

2. Plaintiff brings this action pursuant to Section 17 of the FLSA, 29 U.S.C. § 217, to enjoin Defendants from violating Sections 11(c), 12(c) and 15(a)(4) and (a)(5) of the Fair Labor Standards Act of 1938, as amended (“FLSA”), 29 U.S.C. §§ 211(c), 212(c) and 215(a)(4) and (a)(5).

3. Under Section 16(c) of the FLSA, 29 U.S.C. § 216(c), the Acting Secretary also seeks to recover tip amounts owed under the FLSA to employees of Defendants, as listed by name in the attached Exhibit A to this Complaint, for the period of January 5, 2020 through date of trial, together with an equal amount as liquidated damages.

JURISDICTION

4. This Court has subject matter jurisdiction over this action under Sections 16 and 17 of the FLSA, 29 U.S.C. §§ 216 and 217; this Court also has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question) and § 1345 (United States as Plaintiff).

5. Venue lies in the United States District for the District of Oregon, pursuant to 28 U.S.C. § 1391(b), because the events giving rise to the claims occurred within this District.

DEFENDANTS

6. Defendant Pizzicato Inc. (“Pizzicato”) is and at all relevant times has been a corporation in the state of Oregon with a principal place of business at 121 S Bancroft Street Portland, OR 97239, within the jurisdiction of this Court, and has been engaged in the restaurant business. Defendant Pizzicato operates a chain of restaurants including the following locations (hereinafter “Locations”):

- **Beaverton:** 10719 SW Beaverton Hillsdale Highway, Beaverton, OR 97005
- **Cornell (also called Westside):** 14740 Northwest Cornell Road, Portland, OR 97229
- **Forest Heights:** 2025 NW Miller Road, Portland, OR 97229
- **Fremont:** 4217 NE Fremont Street, Portland, OR 97213

- **Hillsdale:** 6358 SW Capitol Highway, Portland, OR 97239
- **Lake Oswego:** 15180 SW Bangy Road, Lake Oswego, OR 97035
- **Mt. Tabor (also called Division):** 6042 SE Division Street, Portland, OR 97206
- **Murray Hill:** 14845 SW Scholls Ferry, Beaverton, OR 97007
- **Pearl:** 1265 NW 10th Avenue, Portland, OR 97209
- **Sylvan:** 1749 SW Skyline Boulevard, Portland, OR 97221
- **Westmoreland:** 1630 SE Bybee Boulevard, Portland, OR 97202
- **Laurelhurst (also called Eastside/Burnside):** 2811 E Burnside St., Portland, OR 97214

7. At all relevant times, Defendant Pizzicato employed workers, including employees named in Exhibit A, as counter staff, shift leads, pizza cooks and other front of the house staff occupying customarily tipped positions.

8. At all relevant times, Defendant Pizzicato is and has been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), in relation to the employees listed on Exhibit A to this Complaint, and all other employees not yet known to the Acting Secretary whom she later identifies.

9. Defendant Marc Frankel is a founder, owner, Treasurer and manager of Pizzicato. At all relevant times, Defendant Marc Frankel acted directly and indirectly in the interests of Pizzicato in relation to its employees, including determining employment practices. Defendant Marc Frankel is individually liable as an employer under Section 3(d) of the FLSA, 29 U.S.C. § 203(d), in relation to the employees listed on Exhibit A to this Complaint. The claims against Defendant Marc Frankel in this case arise out of and are directly related to his business activities in the jurisdiction of this Court.

10. Defendant Tracy Frankel is a founder, owner, President, Secretary and manager of Pizzicato. At all relevant times, Defendant Tracy Frankel acted directly and indirectly in the interests of Pizzicato in relation to its employees, including determining employment practices. Defendant Tracy Frankel is individually liable as an employer under Section 3(d) of the FLSA,

29 U.S.C. § 203(d), in relation to the employees listed on Exhibit A to this Complaint. The claims against Defendant Tracy Frankel in this case arise out of and are directly related to her business activities in the jurisdiction of this Court.

11. Defendant John-Felix Rippel is the CEO, an owner, and a manager of Defendant Pizzicato. At all relevant times, Defendant Rippel acted directly and indirectly in the interests of Pizzicato in relation to its employees, including determining employment practices. Defendant Rippel is individually liable as an employer under Section 3(d) of the FLSA, 29 U.S.C. § 203(d), in relation to the employees listed on Exhibit A to this Complaint. The claims against Defendant Rippel in this case arise out of and are directly related to his business activities in the jurisdiction of this Court.

DEFENDANTS ARE AN ENTERPRISE COVERED BY THE FLSA

12. At all relevant times, Defendants Marc Frankel, Tracy Frankel, and John-Felix Rippel owned, operated, and controlled Pizzicato for the common business of running pizza restaurants in the state of Oregon.

13. Defendants' activities constitute, and at all times material hereto have constituted, related activities performed through unified operation or common control for a common business purpose; and are, and at all times material hereto have been, an "enterprise" as defined in the FLSA § 3(r), 29 U.S.C. § 203(r).

14. The aforesaid enterprise has, and at all times material hereto has had, employees engaged in commerce or in the production of goods for commerce, or in handling, selling or otherwise working on goods or materials which have been moved in or produced for commerce. Said enterprise has, and at all times material hereto has had, an annual gross volume of sales made or business done (exclusive of any excise taxes at the retail level, if any, that were separately stated) of no less than \$500,000.00; and said enterprise constitutes, and at all times material hereto has constituted, an "enterprise engaged in commerce or in the production of goods for commerce" as defined in the FLSA § 3(s), 29 U.S.C. § 203(s).

FACTS REGARDING VIOLATIONS

15. During the relevant time period, Defendants unlawfully required employees at its

Locations to share a portion of their tips with General Managers, Assistant Managers, and Kitchen Managers; all employees who are considered managers or supervisors under 29 C.F.R. § 531.52 since their duties match those of an executive employee as described in 29 C.F.R. § 541.100(a)(2) through (4).

16. During the relevant time period, Defendants failed to maintain, keep and preserve records of tips, including the weekly and monthly amounts of tips received reported by the employees to the employer.

17. During the relevant time period, Defendants unlawfully employed oppressive child labor by employing a 17-year-old employee to perform work as a pizza delivery driver at its Murray Hill establishment.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF: TIP VIOLATIONS

18. The Acting Secretary realleges and hereby incorporates by reference the foregoing paragraphs as though fully set forth herein.

19. Defendants have violated the provisions of Section 3(m)(2)(B) of the FLSA, 29 U.S.C. § 203(m)(2)(B), by allowing its managers to keep tips received by employees.

20. At all relevant times, Defendants have willfully violated Section 3(m)(2)(B) of the FLSA, 29 U.S.C. § 203(m)(2)(B). Defendants knew or should have known of the FLSA's prohibition against an employer keeping tips received by employees but continued to collect tips earned by employees anyway.

SECOND CLAIM FOR RELIEF: RECORDKEEPING VIOLATIONS

21. The Acting Secretary realleges and hereby incorporates by reference the foregoing paragraphs as though fully set forth herein.

22. Defendants have violated the provisions of Sections 11(c) and 15(a)(5) of the FLSA, 29 U.S.C. § 211(c) and § 215(a)(5), by failing to maintain, keep, and preserve tip records as required under 29 C.F.R. Part 516.

23. At all relevant times, Defendants have willfully violated Sections 11(c) and 15(a)(5) of the FLSA, 29 U.S.C. § 211(c) and § 215(a)(5). Defendants failed to maintain, keep,

and preserve proper records of tips even though they knew or should have known that this conduct violated the FLSA.

THIRD CLAIM FOR RELIEF: OPPRESSIVE CHILD LABOR

24. The Acting Secretary realleges and hereby incorporates by reference the foregoing paragraphs as though fully set forth herein.

25. Defendants have violated Section 12(c) of the FLSA, 29 U.S.C. § 212(c), by employing oppressive child labor in commerce or in the production of goods for commerce or in an enterprise engaged in commerce or in the production of goods for commerce.

26. Defendants willfully violated 12(c) of the FLSA, 29 U.S.C. § 212(c), by employing oppressive labor when they knew or should have known that it was in violation of the FLSA.

PRAYER FOR RELIEF

WHEREFORE, good cause having been shown, the Acting Secretary prays for judgment against Defendants as follows:

1. For an Order:

a. Under Section 17 of the FLSA, 29 U.S.C. § 217, permanently enjoining and restraining Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with them from prospectively violating the FLSA including Sections 11(c), 12(c), 15(a)(4) and 15(a)(5), 29 U.S.C. §§ 211(c), 212(c), 215(a)(4) and 215(a)(5).

2. For an Order:

a. Under Section 16(c) of the FLSA, 29 U.S.C. § 216(c) finding Defendants liable for all tip compensation earned, from at least January 5, 2020 to all Defendants' employees including the employees listed in attached Exhibit A and other employees not presently known to the Acting Secretary, and an additional equal amount as liquidated damages;

3. For an Order providing such further legal and equitable relief as may be deemed necessary or appropriate; and

4. For an Order awarding the Acting Secretary the costs of this action.

5. For an Order awarding the Acting Secretary any other legal or equitable relief that the Court deems necessary and appropriate.

Dated: January 30, 2024

SEEMA NANDA
Solicitor of Labor

MARC A. PILOTIN
Regional Solicitor

KATHERINE E. CAMERON
Associate Regional Solicitor

/s/ Andrew M. Katz
Andrew M. Katz
Senior Trial Attorney

/s/ Julia B. Hayer
Julia B. Hayer
Trial Attorney

Attorneys for the Plaintiff
U.S. Department of Labor

EXHIBIT A

	First Name	Last Name
1	Jordon	Adams
2	Austin	Agnew
3	Josue	Aldana Oliva
4	Ana	Allsup Cabrera
5	Alejandro	Amador
6	Aaron	Anderson
7	Helen	Andino
8	Josie	Arndt
9	Nathan	Asher
10	Keith	Baggetta
11	Seth	Baker
12	Neishma	Balaguer Sagardia
13	Nicholas	Baldwin
14	Joshua	Balogh
15	Zara	Balzer
16	Joseph	Bangs
17	Cooper	Banks
18	Sterling	Baraquio
19	Hannah	Barchini
20	Mykael	Barnes
21	William	Barnett
22	Tyler	Beecroft
23	Florimina	Berduo De Gomez
24	Seth	Berg
25	Grant	Bergquist
26	Natalia	Bermudez

27	Tyson	Biegler
28	James	Bingham
29	Eli	Bolan
30	Karlee	Boon
31	Lilia	Brackinreed
32	Joel	Brazington
33	Ryan	Brisbois
34	Jackson	Bromley
35	Destin	Brown
36	Natalie	Brown
37	Elizabeth	Brown
38	Samantha	Brzoska
39	Jonathan	Buck
40	Audree	Buckley
41	Jackson	Buerk
42	Max	Burbell
43	Kyle	Burns
44	Tyler	Burrell
45	Jasper	Byrnes
46	Giordan	Calzadilla
47	Sage	Campa
48	Brandy	Cantua
49	Anna	Carlin
50	Cole	Carter
51	Andrew	Castaneda
52	Rodolfo	Castanon
53	Angelo	Castillo
54	Nathan	Cekoric

55	Desiree	Chambers
56	Alan	Chan
57	Dhruva	Chatterjee
58	Yee-Ron	Cheng
59	Garrett	Chin
60	Zodiac	Clark
61	Gavin	Codda
62	Cassius	Comfort
63	Stephen	Conley
64	Cedar	Connell
65	Cory	Corzine
66	Carollyne	Coulson
67	Annabel	Cowden
68	Annie	Crane
69	Cosmo	Crecca
70	Kimberly	Cruz Cobar
71	Aja	Cuevas-Tolentino
72	Max	Culp
73	Olivia	Cu-Pierson
74	Cy	Cupper
75	Bridger	Curtis
76	Scarlett	Dalbok
77	Michael	Darling
78	Carson	Davis
79	Lauren	Decker
80	Laura	DeNicola
81	Christopher	DeNicola
82	Ashley	Dietz

83	Wesley	Dilling
84	Douglas	Dillingham
85	Mikko	Dizack
86	Laura	Doolittle
87	Britt	Doom
88	Jan	Droste
89	Colton	Dunham
90	Michael	Duval
91	Lily	Eckert
92	Heidi	Elliot
93	Elizabeth	Emer
94	Douglass	Erbst
95	Nate	Erickson
96	Gabriel	Ervin
97	Nathan	Escobar
98	Jehudi	Escobar
99	Troy	Espinosa
100	Fitch	Evans
101	Ian	Fairweather
102	Colin	Farver
103	Maya	Feldman-Dragich
104	Marcus	Ferreira
105	Daniel	Fitzgerald
106	Kai	Fontenot
107	Ted	Frakes
108	Luke	Frechette
109	John	Freed
110	Martin	Fritzsche

111	Jonathan	Fulton
112	Cassandra	Funmaker
113	Amelia	Garfias Echeverria
114	Eric	Gebhard
115	Alex	Gedrose
116	Paiman	Ghamai
117	Sean	Gilfillan
118	Nathaniel	Gingell
119	Michael	Glenn
120	Jonah	Goldin-Dubois
121	Madeline	Goldman
122	Maria	Gonzalez
123	Brooke	Gonzalez
124	Patricia	Gonzalez Osorio
125	John	Gormley
126	Sonja	Gower
127	Tyler	Grates
128	AlexAndria	Griffey
129	Nicholas	Grover
130	Zachary	Grow
131	Katherine	Grube
132	Whitney	Guiou
133	Drew	Gunn
134	Teran	Hadley
135	Charlie	Hagen
136	Jacob	Haley
137	Halie	Halverson
138	Erin	Hanscom

139	Lilly	Hanson
140	Brian	Hanson
141	Aryana	Hantz
142	Clare	Hardwick
143	Chase	Hargrove
144	Aaron	Harleman
145	Alex	Harmon
146	Henry	Hausner
147	Simone	Hawley
148	Tremaine	Hawthorne
149	Kelton	Hedges
150	Isabel	Heller
151	Emanuel	Heller
152	Travis F	Hennon
153	Rory	Henry
154	Mia	Hermann
155	Amy	Hillberg
156	Jonah	Holder
157	Riley	Holenstein
158	Courtney	Holman
159	Dustin	Holtz
160	Tom	Hopkins
161	Luke	Horstmann
162	Noosheen	Hosseini
163	Levi	Hudson
164	Jacob	Hughey
165	Andre	Huynh
166	Nick	Jackson

167	Nina	Jacobs
168	Uriah	Johnson
169	Elijah	Jones
170	Creedence	Jordan
171	Jay	Jording
172	Ryan	Keefe
173	Genevieve	Kelly
174	Riley	Kemp
175	Miriam	Kennelly
176	Lucian	Kennelly
177	Jacob	Kersley
178	Austin	King
179	Sophia	Klahn
180	Irina	Klippert
181	Eli	Krantz
182	Austin	Kreiter
183	Paul	Kress
184	Braedon	Kwiecieu
185	William	Ladd
186	Emily	Lane
187	Emrie	Langfeldt
188	Ka'ena	Larson
189	Maryjane	Lasser
190	Cassidy	Leathers
191	Abby	Ledoux
192	Rachel	Lee
193	Claire	Lee
194	Jason	LeFever

195	Brendon	Lelugas
196	Fredryk	Lemke
197	Abigail	Lenk
198	Jade	Lennon
199	Ian	Lewis
200	Nathan	Limbaugh
201	Evelyn	Lion
202	Piper	Livingston
203	Andrew	Loftus
204	Pamela	Long
205	Alison	Lowe
206	Patrick	Luker
207	Carla	Macedo
208	Christopher	Mackelprang
209	Forest	Maddox
210	Cecilia	Madera
211	Breanna	Madison
212	Wyatt	Mahanes
213	Michael	Manning
214	Grant	Mansour
215	Emma	Marchello
216	Conner	Marron
217	Christopher	Martinez
218	Jimmie	Mason
219	Alex	Massenkoff
220	Spenser	Masterson
221	Adrien	Mathieu
222	William	Matlock

223	Braden	Maurer
224	Cory	McAllister
225	Nicholas	McCleery
226	Timothy	McFadden
227	Sam	McGinnis
228	Samuel	Meade
229	Jared	Melgarejo
230	Bibian	Mendez
231	Anthony	Mendez Mendez
232	Andrew	Mercil
233	Melanie	Merlo
234	Kathryn	Mersereau
235	Natalie	Merwin
236	Stuart	Meyer
237	Daniel	Michtom
238	Destiny	Middleton
239	Guillermo	Mier
240	Mitchelle	Millbrooke
241	Ethan	Mills
242	Danica	Milos-Manthey
243	Spencer	Moffat
244	Paul	Molatore
245	Alexander	Montgomery
246	Riley	Moore
247	Chase	Morley
248	Devan	Munsey
249	Kathryn	Murphy
250	Patrick	Namwembe

251	Jessica	Nash
252	Blanca	Navarrete
253	Nicholas	Newlin
254	Vu	Nguyen
255	Nils	Niswonger
256	Caitlin	Noles
257	Sophia	Nomina
258	Charles	Olson
259	Kaia	Opalinski
260	Evan	Orellana
261	Derek	Osborne
262	Allen	Parks
263	Lindsey	Patterson
264	Faith	Pauken
265	Matthew	Perkins
266	Ekaterina	Pervova
267	Michael	Philbrook
268	Adrian	Pinger
269	Max	Platt-Devlin
270	Nicholas	Pontrelli
271	Evan	Porter
272	Dylan	Powell
273	Madison	Ranger
274	Nicholas	Reardon
275	Kris	Reaves
276	Joshua	Reed
277	Isabella	Retallack
278	Ludin	Reyes Mendez

279	David	Reynaud
280	Thomas	Reynolds
281	Jordan	Rhodes
282	Jacob	Rhodes
283	Ryan	Rieder
284	Alexis	Riggs
285	August	Roberts
286	Oscar	Robertson
287	Joshua	Rodrigues
288	Malia	Rogers
289	Joseph	Roman
290	Pine	Ross
291	Gabriel	Roulier
292	Zackary	Rowe
293	Ken	Rushing II
294	Kenneth	Russell
295	Chayse	Russell
296	Seth	Russell
297	Devin	Salmon
298	Jonathan	Sanders
299	John	Sanderson
300	Lydia	Scarlett
301	Michael	Schenker
302	Carter	Schuld
303	Oliver	Schulenburg
304	Kai	Segal
305	Tyler	Seitz
306	Aleksander	Selway

307	Duncan	Sennett
308	Calvin	Sewell
309	Catherine	Seymore
310	Erika	Shapen
311	Anna	Shaw
312	Kevin	Shireman
313	Alan	Shirley
314	Charles	Shoemaker
315	Jenna	Simpson
316	Ian	Simpson
317	Christina	Smillie
318	Caresse	Smit
319	Hayden	Smith
320	William	Smith
321	Paloma	Smith
322	Sean	Snow
323	Zakara	Spencer
324	Michael	Spencer
325	Brodie	Sperry-Doyle
326	Shawn	Sprey
327	Graham	Steele
328	Jared	Steffenhagen
329	Amanda	Stepanovich
330	Eleanore	Stevens
331	Raeanne	Stroup
332	Lucas	Stutte
333	Elyse	Sutton
334	Elijah-Cole	Tabion

335	Andrew	Thornton
336	Ryan	Thuringer
337	Augustin	Tiana
338	Brandon	Tore
339	Bich	Tran Do
340	Evan	Trox
341	Ian	Turk
342	Hayden	Vandermeer
343	Peter	VanOrnam
344	Giovanni	Vazquez
345	Jose	Verdi
346	Logan	Verplancke
347	Olin	Vetterlein
348	Maria	Villanveva
349	Sawyer	Vogel
350	Ingrid	Vollan
351	Steven	Wachtman
352	Alex	Wadsworth
353	Jessica	Way
354	Mason	Webb
355	Elspeth	Weber
356	Amy	Welch
357	Elena	Wiedlin
358	Thomas	Wilson
359	Aila	Wood
360	Riley	Woodruff
361	Trevor	Woolman
362	Addison	York

363	Drew	Young
364	Jackson	Zenti
365	Maizy	Zeringue
366	Steven	Zielsdorf
367	Nick	Zuver